

**SNMP RESEARCH, INC. and SNMP  
RESEARCH INTERNATIONAL, INC.,**

**BROADCOM INC.; BROCADE  
COMMUNICATIONS SYSTEMS LLC;  
AND EXTREME NETWORKS, INC.,**

## Jury Demand

Case 3:20-cv-00451-CEA-DCP Document 305 Filed 04/20/23 Page 1 of 3 PageID #: 14311

allegations that make a plausible inference that Extreme acted ‘intentionally, fraudulently, maliciously or recklessly.’” *Id.* But Extreme’s Motion to Dismiss (Dkt. 277) did not attack the Amended Complaint’s request for punitive damages, nor did it attack the sufficiency of the host of other allegations detailing Extreme’s fraudulent behavior that support the request for punitive damages. *See, e.g.*, Dkt. 244 ¶¶ 87-99. Instead, Extreme’s Motion to Dismiss attacked SNMP International’s fraud claim on the sweeping and novel grounds that it “mirrors” the breach of contract claim and is therefore purportedly barred by the economic loss doctrine (a doctrine that the Tennessee Supreme Court has never applied outside of the products liability context). Dkt. 277 at 20-23.

Because Extreme’s Motion to Dismiss did not challenge Plaintiffs’ well-pleaded allegations of fraud, *id.*, and because it did not challenge the sufficiency of the Amended Complaint’s request for punitive damages, *id.*, Extreme could not reverse course on Reply by arguing that the “claim for punitive damage should be dismissed.” Reply at 25. It is “well-settled” that parties cannot raise new issues on reply. *See Malin v. JPMorgan*, 860 F. Supp. 2d 574, 577 (E.D. Tenn. 2012) (“It is well-settled that a movant cannot raise new issues for the first time in a reply brief because consideration of such issues ‘deprives the non-moving party of its opportunity to address the new arguments.’”).

In light of the foregoing and Extreme’s improper argument newly-presented on page 25 of its Reply, Plaintiffs respectfully request that the Court strike this page—or at a minimum, decline to address it. *See, e.g., Lincoln Mem’l Univ. Duncan Sch. of L. v. Am. Bar Ass’n*, No. 3:11-CV-608, 2012 WL 1108125, at \*7 (E.D. Tenn. Apr. 2, 2012) (declining to address argument raised for the first time on reply “as a matter of litigation fairness and procedure”). Alternatively, Plaintiffs respectfully request leave to file the attached sur-reply addressing Extreme’s new argument. *Frost v. Unum Life Ins. Co. of Am.*, No. 1:21-CV-269, 2023 WL 2261415, at \*18 (E.D. Tenn. Feb. 14, 2023).

Respectfully submitted,

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By: /s/ Cheryl G. Rice

John L. Wood, Esq. (BPR #027642)  
Cheryl G. Rice, Esq. (BPR #021145)  
Rameen J. Nasrollahi, Esq. (BPR #033458)  
EGERTON, McAFEE, ARMISTEAD & DAVIS, P.C.  
900 S. Gay Street, Suite 1400  
P.O. Box 2047  
Knoxville, TN 37902  
(865) 546-0500 (phone)  
(865) 525-5293 (facsimile)  
jwood@emlaw.com  
crice@emlaw.com  
masrollahi@emlaw.com

By: /s/ A. Matthew Ashley

A. Matthew Ashley (CA Bar. No. 198235)  
Morgan Chu (CA Bar. No. 70446)  
David Nimmer (CA Bar. No. 97170)  
Olivia L. Weber (CA Bar. No. 319918)  
IRELL & MANELLA LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067-4276  
(310) 277-1010 (phone)  
(310) 203-7199 (facsimile)  
mchu@irell.com  
dnimmer@irell.com  
mashley@irell.com  
oweber@irell.com

*Attorneys for Plaintiffs  
SNMP Research International, Inc. and  
SNMP Research, Inc.*